

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Monday, June 2, 2008

Division One

A119093 – Mary L. Richtenburg et al., v. Wells Fargo Bank, N.A.

The order denying plaintiffs' application for a preliminary injunction is affirmed.
Swager, J. We Concur: Swager, J., Stein, Acting P.J., Margulies, P.J. (Not for Publication.)

Division Two

A113595 – California Correctional Peace Officers Association v. State of California et al.

A118069 – California Correctional Peace Officers Association v. State of California et al.

The judgment in A113595 (case No. CPF-05-505683) is reversed. The judgment in A118069 (case No. CPF-06-506336) is reversed. The matter is remanded to the trial court for further proceedings consistent with the views expressed herein. Each party to bear its own costs. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication.)

A117039 – The People v. Kevin Goosby.

The case is remanded to the trial court for a recalculation of the custody credits to which appellant is entitled; otherwise, the judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Four

A119814 – Jose Facundo-Guerrero v. Workers' Compensation Appeals Board et al.

The decision of the WCAB is affirmed. Each side to bear their own costs on appeal. Ruvalo, P.J. We Concur: Reardon, J., Sepulveda, J. (Certified for Publication.)

Tuesday, June 3, 2008

Division Two

A106894 – The People, v. Maile M. Carmichael.

The judgment, as modified to strike the restitution order under Penal Code section 1202.4 pursuant to our prior opinion, is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

A118684 – Baychester Shopping Center, Inc., et al. v. San Francisco Residential Rent Stabilization and Arbitration Board of the City and County of San Francisco; Larry Fingerhut, R.P.I.

The order is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A118609 – The People, v. Brandon Joseph Cardenas.

The court's July 24, 2007 judgment is vacated. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Tuesday, June 3, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Reardon, J.,* and Richard H. Sandvik, Deputy Clerk.

A117906 Sol Shukman et al.,

v.

James H. Nance

Cause called and argued by Seth E. Watkins, counsel for appellant, and by Yana Yudelevich, counsel for respondent. Cause ordered submitted.

A117561 In re Leonard Rubio on Habeas Corpus.

Cause called and argued by Theresa A. Gibbons, counsel for petitioner, and by Amber N. Wipfler, counsel for respondent. Submission deferred pending further briefing.

A118575 In re Gregory D. Reed on Habeas Corpus.

Cause called and argued by Benjamin Ramos, counsel for petitioner, and by Stacey D. Schesser, counsel for respondent. Submission deferred pending further briefing.

Court adjourned at 10:40 a.m.

*Judge from Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, June 4, 2008

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Swager, Justice, Margulies, Justice, Fred Abad and Raquel Arellano, Deputy Clerks; and CHP Officer Christian Oliver, Bailiff.

First case on calendar was passed due to the fact that counsel for appellant was not present.

A118911 Witt Home Ranch Inc.,
v.
Sonoma County.
Cause called and argued by Michael VanZandt, counsel for appellant, and Sue A. Gallagher, counsel for respondent. Cause ordered submitted.

At this time, first case on calendar was heard.

A116298 Jeff Breibart,
v.
Kate Warner et al.
Cause called and argued by Jeff Breibart, counsel for appellant, and Kate Warner, counsel for respondents. Cause ordered submitted.

At this time, Justice Marchiano left the bench; Justice Stein joined the bench and presided over the remainder of the calendar.

A114564 The People,
v.
Willie Coleman, III.
Cause called and argued by Susan Marie Burke, counsel for appellant, and John Deist, counsel for respondent. Cause ordered submitted.

A115069 Mari-Lynne Earls,
v.
Elizabeth Lee et al.
Cause called and argued by Robert W. Drane, counsel for appellant, and Scott Bonzell, counsel for respondents. Cause ordered submitted.

Continued

A117128 David Madden,
 v.
 Summit View Inc.
Cause called and argued by Eugene Richard Oreck, counsel for appellant, and
Kimberly Amick, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION ONE

Wednesday, June 4, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, Presiding Justice, Stein, Justice, Swager, Justice, Margulies, Justice, Raquel Arellano, Deputy Clerk; and CHP Officer Martin Fredericks, Bailiff.

A119826 Rainer J. Faerber,
v.
Robert Schroth et al..
Cause called and argued by Rainer J. Faerber, appellant in propria persona, and Kelly D. Fair, counsel for respondent. Cause ordered submitted.

At this time, Justice Swager left the bench.

A118577 In re Carlos Y., a Person Coming Under the Juvenile Court Law.
The People,
v.
Carlos Y.
Cause called and argued by Olga Kelley, counsel for appellant, and Michael Banister, counsel for respondent. Cause ordered submitted.

A114258 Jorge Fernandez et al.,
v.
CA Dept. of Pesticides Regulation,
CA Strawberry Commission et al.
Cause called and argued by Anita E. Ruud, counsel for appellant Dept. of Pesticide Regulation, Tony J. Tanke, counsel for appellants Strawberry Commission et al., and Jonathan Gettleman, counsel for respondents. Cause ordered submitted.

A118597 Kuo-Liang Chen,
v.
Lincoln Broadcasting Company.
Cause called and argued by Peter Huang, counsel for appellant, and Thomas R. Burke, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, June 4, 2008 (Continued)

Division One

A118993 – In re Erin R., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Richard R.

The order appealed from is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Four

A120384 – The People, v. Pahola Eugenia Alvarado-Sanchez.

The judgment is affirmed. Ruvolo, P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Division Five

A118346 – The People, v. Ronald W. Ross.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A118866 – Maxyn Cadlo et al. v. Metalclad Insulation Corporation.

The order granting summary judgment is reversed and the judgment is vacated. Appellants shall recover their costs on appeal. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Thursday, June 5, 2008

Division One

A118530 – In re G. B., a Person Coming Under the Juvenile Court Law. The People of the State of California v. G. B.

The dispositional orders of July 20, 2007, are affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A115713 – The People, v. Andre L. Rutledge.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication.)

Division Two

A115652 – Carson Curcini et al. v. County of Alameda et al.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A119823 – In re Michael P., a Person Coming Under the Juvenile Court Law. The People v. Michael P.

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Four

A1187025 – The People, v. Lamon Raney.

The judgment is reversed to the extent the trial court found the enhancement allegations true, and is affirmed in all other respects. The matter is remanded for a limited new trial on the enhancement allegations. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A118563 – David Elsebusch v. County of Humboldt et al.

By The Court: The petition for rehearing is denied. Ruvolo, P.J. (Not for Publication.)

Thursday, June 5, 2008 (Continued)

Division Five

A118944 – The People, v. Emmanuel Darnell Kemp.

The order is affirmed. Simons, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A119582 – The People, v. Edwin Gail Donahue, Sr.

The judgment is affirmed. We remand solely to direct the trial court to prepare an amended abstract of judgment correctly referring to the offense committed in case No. CR066482 as Penal Code section 4532, subdivision (b)(1), and to forward a certified copy of the amended abstract to the California Department of Corrections and Rehabilitation. Simons, Acting P.J. We Concur: Needham, J., Stevens, J. * (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Friday, June 6, 2008

Division Two

A115843 – David Grassi v. Robert Q. Tang.

The judgment is affirmed. Respondent is awarded his costs on this appeal. Kline, P.J.
We Concur: Lambden, J., Richman, J. (Not for Publication.)

Division Five

A115355 – The People, v. Jaime Santana.

The upper term sentence on count 3 (Pen. Code, § 264.1) is vacated and the matter is remanded for resentencing in accordance with the procedures outlined in *Sandoval, supra*, 41 Cal.4th at pages 843-852. The judgment is otherwise affirmed. Simons, Acting P.J. We Concur: Needham, J., Stevens, J.*

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Monday, June 9, 2008

Division One

A117174 – Eddie C. Welbon v. Mt. Zion Spiritual Temple, Inc.

The judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A117168 – The People, v. Carlos Roberto Ramos.

The judgment is affirmed.⁸ Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Certified for Publication.)

Division Two

A116682 – Peter Pappas et al v. Bruce Seltzer.

The November 30, 2006 order denying Seltzer's anti-SLAAP motion is affirmed. The motion for sanctions is granted, awarding sanctions against Seltzer in the amount of \$6,750 payable to Peter and Sophie Pappas. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A120446 – In re Juan C., a Person Coming Under the Juvenile Court Law. The People v. Juan C.

The jurisdictional and dispositional orders are affirmed. Jenkins, J. We Concur: McGuinness, P.J., Pollak, J. (Not for Publication.)

Division Four

A118352 – The People, v. David Francis Dimarino.

Defendant's sentence is reversed and the case is remanded to the trial court for resentencing in accordance with *Sandoval* and *French*. (See also Cal. Rules of Court, rule, 4.425(b).) In all other respects, the judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

⁸ We note that the abstract of judgment only shows the municipal court number rather than the superior court number. The clerk is ordered to file an amended abstract that references the superior court number 199626.

Monday, June 9, 2008 (Continued)

Division Five

A115457 – In re Cellphone Termination Fee Cases.

The trial court's denial of certification of the Current Subscriber Class is reversed. Plaintiffs are awarded their costs on appeal. Stevens, J.* We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A118724 – Glenda Welch et al. v. Big Dog City Corporation et al.

By The Court: It is ordered that the opinion filed herein on May 9, 2008, be modified as follows: (See Order).

This modification does not effect a change in the judgment.

The petition for rehearing is denied. Jones, P.J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Tuesday, June 10, 2008

Division Two

A116484 – The People, v. Christopher W. Wells.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J.
(Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, June 10, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A120916 Scottsdale Insurance Company
 v.
 Superior Court, San Francisco County
 Park Terrace Partners et al.
Cause called. Ellyn E. Nesbit argued for petitioner Scottsdale. Lisa Marie Black argued for real parties in interest. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A11786025 People
 v.
 Cornelious Boyle
Cause called. Rudy Kraft teleargued for appellant Boyle. Sara Turner argued for respondent. Cause submitted.

A119010 Neil Le Sage et al.
 v.
 Union Carbide Corporation
Cause called. Dean Hanley argued for appellants Le Sage et al. Kim Zeldin argued for respondent. Cause submitted.

A117320 Allison Keith Hilton et al.
 v.
 Arizona Public Services
Cause called. Stephen Fishback argued for appellants Hilton et al. Trevor J. Will argued for respondent Arizona. Cause submitted.

A118432 Golden Eagle Insurance
 v.
 Chevron USA
Cause called. Allison Shue argued for appellant Chevron. Richard Edwards argued for respondent Golden. Cause submitted.

Court recessed at 11:18 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, June 10, 2008

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

- A106199 Californians for Disability Rights
 v.
 Mervyn's, LLC
Cause called. Monique Olivier argued for appellant Californians. David McDowell argued for respondent. Cause submitted.
- A112738 People
 v.
 Neal Taglima Fiu
Cause called. Stephen Bedrick argued for appellant Fiu. Aileen Bunney argued for respondent. Cause submitted.
- A115254 People
 v.
 Juo En Boo
Cause called. Thomas Burton argued for appellant Boo. Chris Wei argued for respondent. Cause submitted.
- A115960 People
 v.
 Tracy Conrad Smith
Cause called. Hilda Scheib argued for appellant Smith. Karen Bovarnick argued for respondent. Cause submitted.
- A118461 Michael La Sala
 v.
 Bally Total Fitness Holding et al.
Cause called. Henry D. Lederman argued for appellants Bally et al. Jason L. Oliver argued for respondent. Cause submitted.
- A115068 Tina O'Dell
 v.
 International Asset Systems
Cause called. Joel Liberson argued for appellant O'Dell. John D. McLachlan argued for respondent. Cause submitted.

Court adjourned 3:43 p.m.

Tuesday, June 10, 2008 (Continued)

Division Four

A118499 & A119121 – Ron Wilson v. Frances Murillo etc.

We reverse the judgment and the posttrial order awarding Murillo attorney fees. Costs on appeal awarded to Wilson. Ruvolo, P.J. We Concur: Reardon, J., Sepulveda, J. (Certified for Publication.)

Division Five

A118979 – The People, v. Joseph Jerome Flowers.

There are no arguable errors. The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

Wednesday, June 11, 2008

Division One

A118201 – In re Ricardo F., a Person Coming Under the Juvenile Court Law. The People v. Ricardo F.

The orders continuing wardship and ordering the minor's confinement are reversed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A118577 – In re Carlos Y., a Person Coming Under the Juvenile Court Law. The People v. Carlos Y.

The orders continuing wardship and ordering the minor's confinement are reversed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A117631 – The People, v. Jesse Allen Kuntz.

The judgment is reversed and the cause remanded to the superior court. That court is directed to vacate the guilty plea if defendant moves to withdraw the plea within 30 days of the finality of this opinion. In that event, on motion of the People the original charges shall be reinstated and trial or other appropriate disposition shall proceed in accordance with the views expressed in this opinion. If defendant does not elect to withdraw his plea of guilty, the superior court shall reinstate the judgment. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A117520 – 706 Sansome Properties et al. v. Massimo Fuchs.

Accordingly, the dismissal of appellants' cross-complaint under section 583.210 is reversed. Respondent is ordered to file a responsive pleading to the cross-complaint within 20 days of the issuance of the remittitur. The case is remanded to the trial court for further proceedings consistent with the views expressed herein. Costs on appeal are awarded to appellants. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A118597 – Kuo-Liang Chen v. Lincoln Broadcasting Company.

The orders granting Lincoln's motion to strike the complaint is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

Division Two

A117411 – The People, v. Claude Rick Givens May III.

That part of the order calling for restitution of \$49,300 in amounts paid by the Sommers to May is reversed and remanded for reconsideration consistent with part III., B., of this opinion; in all other respects, the order is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Wednesday, June 11, 2008 (Continued)

A118154 – The People, v. Boley Wayne Thomas.

The trial court's judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, June 11, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Presiding Justice McGuiness, Siggins, J., Jenkins, J., and A. Reasoner, Deputy Clerk.

A117422 Claudia Carter
v.
San Francisco Unified School District
Cause called and argued by Pamela Pitt, counsel for appellant Carter, and Tim Travelstad, counsel for respondent San Francisco Unified School District. Cause ordered submitted.

A118031 Kathleen Bonner
v.
City of Menlo Park
Cause called and argued by Paul Wagstaffe, attorney for appellant Bonner, and John Flegel, attorney for respondent City of Menlo Park. Cause ordered submitted.

At this point, Jenkins, J. left the bench and Pollak, J. joined the bench. The arguments continued with McGuiness, P.J., Pollak, J., and Siggins, J.

A118443 Penelope Williams
v.
Contra Costa Community College District
Cause called and argued by Daniel Siegel, counsel for appellant Williams, and Eugene Elliott, counsel for respondent Contra Costa Community College District. Cause ordered submitted.

A118443 In re Parrish B., A Person Coming Under the Juvenile Court Law
People
v.
Parrish B.
Cause called and argued by Sara Zimmerman, counsel for appellant Parrish B., and Martin S. Kaye, counsel for respondent People of the State of California. Cause ordered submitted.

- A120536 People
v.
Superior Court of the County of San Francisco
Paul George, Real Party In Interest
Cause called and argued by Moona Nandi, counsel for petitioner State of California, and Brendan Conroy, counsel for real party in interest. Cause ordered submitted.
- At this point, Siggins, J. left the bench and Jenkins, J. rejoined the bench. The arguments continued with McGuinness, P.J., Pollak, J., and Jenkins, J.
- A113337 The Housing Group
v.
Great American Insurance Co.
Cause called and argued by Eugene Stuart, counsel for appellant The Housing Group, and Brian O'Malley, counsel for respondent Great American Insurance Co. Cause ordered submitted.
- At this point, McGuinness, P.J. left the bench and Siggins, J. rejoined the bench. Argument continued with Pollak, Acting P.J., Siggins, J. and Jenkins, J.
- A116349 In re Hasana M., a Person Coming Under the Juvenile Court Law.
Contra Costa County Children and Family Services Bureau
v.
Ray M.
Cause called and argued by Janet Sherwood, counsel for appellant Ray M., and Melinda Frey, counsel for respondent Contra Costa County Children and Family Services Bureau. Cause ordered submitted.
- A116441 Gary Deweese
v.
The Regents of the University of California
Cause called and argued by Joan E. Presky, counsel for appellant Deweese, and David DeJesus, counsel for respondent The Regents of the University of California. Cause ordered submitted.
- A117515 Robert L. Weis, II
v.
Kaiser Foundation Hospital
Cause called and argued by Lloyd C. Ownbey, counsel for appellant Weis, and Seth Neulight, counsel for respondent Kaiser. Cause ordered submitted.

COURT ADJOURNED

Wednesday, June 11, 2008 (Continued)

Division Three

A114510, A114981 – Francisca Amaral, et al., City of Hayward v. Cintas Corporation No. 2, et al.

The judgment and postjudgment orders on appeal are affirmed in their entirety. Plaintiffs shall recover their costs on appeal. McGuiness, P.J. We Concur: Pollak, J., Jenkins, J.
(Certified for Publication.)

Thursday, June 12, 2008

Division Two

A119706 – Michael Jordan v. Kiet Nguyen.

The order appealed from is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

A113230 – Claude Cooper v. Steven A. Stanten et al.

The judgments of dismissal and costs are affirmed. Richman, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Four

A115829 – James Camenson et al. v. Milgard Manufacturing Incorporated et al.

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication.)

A118432 – Steve Poizner, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company, Chevron U.S.A., Inc.

The total pollution exclusion precluded coverage for the groundwater contamination claims in the underlying actions. The allegations in the pleadings do not come within the narrow exceptions to that exclusion, and therefore there was no potential for coverage under the policy. There being no duty to defend, there was no duty to indemnify.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

A115906 – The People, v. Tracy Conrad Smith.

The judgment is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Thursday, June 12, 2008 (Continued)

Division Five

**A117698 – In re Rory R. et al., Persons Coming Under the Juvenile Court Law.
Alameda County Social Services Agency v. Hans R.**

The disposition is affirmed. Jones, P.J. We Concur: Simons, J., Needham, J. (Not for Publication.)

A114380 – Chin Teh Shih, as Trustee, etc., et al. v. Eric W. Lien et al.

The court's order determining prevailing party status and awarding attorney fees and costs is reversed and remanded to the trial court with instructions to determine the prevailing party, if any, based on the final results of the litigation and to award attorney fees and costs, based on the litigation as a whole. Lien/Yen are entitled to their costs on appeal. Simons, J. We Concur: Jones, P.J., Stevens, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to art. VI, section 6 of the California Constitution.

Friday, June 13, 2008

Division Four

A117635 – The People, v. Timothy Allen Moelk.

The judgment is affirmed. Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Division Five

A118898 – In re Tatiana R., et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Katina B.

The order is affirmed. Simons, J., Acting P.J. We Concur: Needham, J., Stevens, J.* (Not for Publication.)

A120886 – The People, v. Hank Jackson Kennedy.

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Reardon, J.* (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, June 16, 2008

Division One

A118223 – In re B. A., a Person Coming Under the Juvenile Court Law. San Francisco County Department of Human Services v. B.A.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A116178 – The People, v. James Woodmancy.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Three

A113337 – The Housing Group v. Great American Insurance Company.

The judgment is affirmed. Great American is to recover its costs on appeal. Pollak, J. We Concur: McGuinness, P.J., Jenkins, J. (Not for Publication.)

Division Four

A114583 & A115323– The People, v. Dennis James Silva.

The appeal is dismissed. Ruvolo, P.J. We Concur: Reardon, J., Rivera, J. (Not for Publication.)

A119360 – In re Barry L., a Person Coming Under the Juvenile Court Law. San Mateo County Human Services Agency v. Barney L.

The juvenile court order is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A119966 – The People, v. Myriss Jon Winston.

The judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

MINUTES
COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

Monday, June 16, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J., Simons, J., Needham, Jr., J., Reardon, J.,* and Richard H. Sandvik, Deputy Clerk.

- A114436 Maria Harrison,
v.
Phyllis H. Smith,
Cause called and argued by Mark G. Bonino, counsel for appellant, and by David W. Moyer, counsel for respondent. Cause ordered submitted.
- A114016 Forough Nadaf-Rahrov,
v.
Neiman Marcus Group,
Cause called and argued by Daniel R. Bacon, counsel for appellant, and by Anna Mary Gannon, counsel for respondent. Cause ordered submitted.
- A115103 The People,
v.
Gary D. Ray,
Cause called and argued by Richard M. Doctoroff, counsel for appellant, and by Arthur P. Beaver, counsel for respondent. Cause ordered submitted.
- A118013 Emanuel Becerra et al.,
v.
Contra Costa County,
Cause called and argued by Pamela E. Dunn, counsel for appellants, and by W. David Walker, counsel for respondent. Cause ordered submitted.
- A118478 Flat Glass Cases,

Cause called and argued by Charles D. Chalmers, counsel for appellants, and by Geoffrey C. Rushing, counsel for respondents. Cause ordered submitted.

A118627 In re James Kees
On Habeas Corpus.

Cause called and argued by Amber N. Wipfler, counsel for appellant, and by Michael Satris, counsel for respondent. Submission deferred.

A115291 The People,
v.
Anthony Claude Sorrell,
Cause called and argued by Donald T. Bergerson, counsel for appellant, and by Catherine Rivlin, counsel for respondent. Cause ordered submitted.

A1183 71 In re Nario J., a Person Coming Under the Juvenile Court Law.
The People,
v.
Nario J.,
Cause called and argued by Nadia Aziz, counsel for appellant, and by Matthew Accardo, counsel for respondent. Cause ordered submitted.

A117325 County of Humboldt et al.,
v.
Robert C. McKee et al.,
Cause called and argued by Todd Williams, Kevin R. Brodehl and Richard Thalhammer, counsel for appellants, and by James L. Meeder, counsel for respondents. Cause ordered submitted.

A117504 Dorry Coppoletta et al.,
v.
The State Of California,
Cause called and argued by Steven T. Wlodek, counsel for appellants, and by Jill T. Bowers, counsel for respondent. Cause ordered submitted.

Court adjourned at 1:00 p.m.

*Judge from Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, June 17, 2008

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Lambden, J., Officer Smith and I. Santos, Deputy Clerk.

- A115400 Phoenix American Incorporated,
 v.
 W. Corey West.
Cause called and argued by Benjamin A. Johnson, counsel for appellant, and Joseph M. Demko, counsel for respondent. Cause ordered submitted.
- A115793 East Santa Rosa Neighbors,
 v.
 City of Santa Rosa;
 Christopherson Homes Inc., et al.
Cause called and argued by Rose M. Zoia, counsel for appellant, and Clayton Clement, counsel for respondent. Cause ordered submitted.
- A119467 New York Chocolate & Confections Company,
 v.
 Hausmann Alain Banet.
Cause called and argued by Hausmann Alain Banet, in propria persona, and Ray Cardozo, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

MINUTES

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Tuesday, June 17, 2008

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Richman, J., Officer Bartlett and I. Santos, Deputy Clerk.

- A118833 Adebowale O. Osijo,
 v.
 Housing Resources Management Inc. et al.;
 California Dept. of Industrial Relations et al.
 Cause called and argued by appellant Adebowale O. Osijo, in propria persona.
 No respondents appeared before the court. Cause ordered submitted.
- A114208 Maria O. Segovia et al.,
 v.
 Peter Bach et al.
 Cause called and argued by Victor Segovia, counsel for appellant, and Stephen
 Dreher, counsel for respondent. Cause ordered submitted.
- A116151 Steve Rossa et al.,
 v.
 D.L. Falk Construction, Inc.
 Cause called and argued by Tony J. Tanke, counsel for appellant, and Marc
 Sherman, counsel for respondent. Cause ordered submitted.
- A116856 Peter V. Thompson et al.,
 v.
 Toll Dublin et al.
 Cause called and argued by Steven N. Holland, counsel for appellant, and Scott
 William Barton, counsel for respondent. Cause ordered submitted.

Court recessed until Wednesday, June 18, 2008, at 9:30 a.m..

Tuesday, June 17, 2008 (Continued)

Division Two

A116765 – The People, v. Shawn D. Aguirre.

The judgment is modified to reverse the conviction on count four and, as so modified, is affirmed. Kline, P.J. We Concur: Lambden, J., Richman, J. (Not for Publication.)

A120265 – In re D.J., a Person Coming Under the Juvenile Court Law. The People v. D.J.

The matter is remanded for a declaration in compliance with Welfare and Institutions Code section 702. In all other respects, the judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Richman, J. (Not for Publication.)

A117002 – The People, v. Hassan Ali Williams.

The orders appealed from are affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A117977, A118667 – In re Lawrence J., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. L.J.

The May 1, 2007 order denying the petition is affirmed. L.J.'s appeal from the July 27, 2007 order terminating parental rights pursuant to section 366.26 is dismissed. Richman, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A118449 – In re Parrish B., a Person Coming Under the Juvenile Court Law. The People v. Parrish B.

The jurisdictional order is affirmed. The dispositional order is vacated and the matter is remanded to the juvenile court to redetermine the maximum time of confinement in conformity with this opinion. Pollak, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A116349 – In re H.M., a Person Coming Under the Juvenile Court Law. Contra Costa County Children & Family Services Bureau v. Ray M.

The orders of the juvenile court are affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

Tuesday, June 17, 2008 (Continued)

Division Four

A114586– In re the Marriage of Robert J. Nielsen, Jr. and Michelle Olds. Robert J. Nielsen, Jr. v. Michelle Olds.

By The Court: The petition for rehearing is denied. Ruvolo, P.J. (Not for Publication.)

A120916 – Scottsdale Insurance Company v. The Superior Court of the City and County of San Francisco; Park Terrace Partners et al., R.P.I.

Let a peremptory writ of mandate issue directing the trial court to vacate its order granting the motion for a stay. Instead, the trial court shall deny the motion and permit Scottsdale to proceed with filing its motion for summary judgment or adjudication. Having served its purpose, the alternative writ is discharged. Scottsdale shall recover costs. (Cal. Rules of Court, rule 8.490(m)(1)(A).) Rivera, J. We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

A116360 – City of Oakland, Richard Word v. Kenny D. Hassey.

The judgment is affirmed in part and reversed in part. Summary judgment in favor of Oakland on its complaint against Hassey is affirmed. The denial of Hassey's summary judgment motion on Oakland's complaint is affirmed. Summary judgment in favor of respondent Word on all of the causes of action in Hassey's cross-complaint is affirmed. Summary adjudication in favor of Oakland as to the first, fifth, sixth, seventh, eighth, and ninth causes of action in Hassey's cross-complaint is affirmed. Summary complaint against Oakland is reversed. The denial of Hassey's summary judgment motion on his cross-complaint is affirmed. The case is remanded to the trial court for proceedings consistent with the views expressed in this opinion. Each side shall bear its own costs on appeal. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Certified for Publication.)

A112794– The People, v. Bindhu Madhava Lang.

By The Court: It is ordered that the opinion filed herein on May 28, 2008, be modified as follows: (See Order).

There is no change in the judgment. The petition for rehearing is denied. Reardon, Acting P.J. (Not for Publication.)

A118410 – California Physicians' Service v. Aoki Diabetes Research Institute.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Certified for Publication.)

A119284 – In re Terrell B., a Person Coming Under the Juvenile Court Law. The People v. Terrell B.

The order of the juvenile court is affirmed. Reardon, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

Tuesday, June 17, 2008 (Continued)

Division Five

A119499 – The People, v. Henry Glen Stanford.

We find no arguable issues on appeal and affirm. Reardon, J.* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, June 18, 2008

Division One

A118152 – The People, v. Gabriel Arturo Bustamante.

The order is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A117707 – In re Todd M. Ferguson, on Habeas Corpus.

The order granting the petition for writ of habeas corpus is reversed. The stay will be dissolved as moot upon the finality of this opinion as to this court. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A116298 – Robert D. Foster v. Kate Warner et al., Jeff Breibart.

The portion of the judgment awarding Warner \$3,925 in attorney fees and costs against Breibart is reversed, and the portion awarding discovery sanctions against Foster and Breibart is affirmed. Upon remand, the trial court is directed to enter a modified judgment making he \$7,850 attorney fee award to Warner payable by Foster alone, and leaving intact the joint and several award of discovery sanctions against Foster and Breibart. The judgment as so modified is affirmed. Each side to bear its own costs on appeal.² Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A121247 – G.R. v. The Superior Court of Marin County; Marin County Department of Health and Human Services et al., R.P.I.

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

² We deny Breibart's request for judicial notice and Warner's request for sanctions on appeal.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION TWO

Wednesday, June 18, 2008

The Court reconvened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Richman, J., Officer and I. Santos, Deputy Clerk.

- A116808 The People,
 v.
 Susannah Merlina Comfort.
Cause called and argued by Geoffrey M. Jones, counsel for appellant, and Michael Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A118244/
A118723 Zack's Incorporated,
 v.
 City of Sausalito et al.
 Zack's Incorporated,
 v.
 Edgewater Yacht Sales et al.
Cause called and argued by Douglas Allen Applegate, counsel for appellant, Gary M. Lepper, counsel for respondent City of Sausalito, and Matthew Rodriguez, counsel for respondent State of California. Cause ordered submitted.
- At this point of the proceedings, Presiding Justice Kline left the bench and Acting Presiding Justice Haerle joined the bench for the remainder of the calendar.
- A116536 The People,
 v.
 Dominique Alexander Wright.
Cause called and argued by Neil Jacob Rosenbaum, counsel for appellant, and Violet M. Lee, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A114624 Carriage House et al.,
 v.
 Lawrence Murphy et al.
Cause called and argued by J. Spencer Edgett, counsel for appellant, and Colin Hatcher, counsel for respondent. Cause ordered submitted.

COURT ADJOURNED.

Wednesday, June 18, 2008 (Continued)

Division Three

A118443 – Penelope Williams v. Contra Costa Community College District et al.

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A118031 – Kathleen Bonner v. City of Menlo Park.

The judgment in favor of the City of Menlo Park is reversed, and the matter is remanded for further proceedings. Plaintiff is awarded costs on appeal. McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A116441 – Gary S. Dewese v. Regents of the University of California.

The judgment is affirmed. Pollak, Acting P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A117412 – The People, v. Sean Walter Harris.

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

A117515 – Robert L. Weis, II v. Kaiser Foundation Hospital.

The judgment is affirmed. Siggins, J. We Concur: Pollak, Acting P.J., Jenkins, J. (Not for Publication.)

A120800 – In re Vincent S., a Person Coming Under the Juvenile Court Law. The People v. Vincent S.

The judgment is affirmed. Siggins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

Division Five

A119477 – The People, v. Hasaan Saleem Weddington.

The judgment is affirmed. Reardon, J.* We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A117906 – Sol Shukman et al. v. James H. Nance.

The order denying appellant's motion to vacate the renewal of the judgment is affirmed. Jones, P.J. We Concur: Simons, J., Reardon, J.* (Not for Publication.)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, June 19, 2008

Division Five

A104955 – Muzzy Ranch Co. V. Solano County Airport Land Use Commission.

The judgment is affirmed. Stevens, J. * We Concur: Jones, P.J., Simons, J. (Certified for Publication.)

A119622 – In re Justin P, a Person Coming Under the Juvenile Court Law. The People v. Justin P.

The matter is remanded to the juvenile court for compliance with section 702. In all other respects, the judgment is affirmed. Reardon, J. * We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, June 20, 2008

Division One

A117968 – The People, v. Ruben S. Elpedes.

The judgment is affirmed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication.)

A118993 – In re Erin R., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Richard R.

By The Court: It is ordered that the opinion filed herein on June 4, 2008, be modified as follows: (See Order).

Appellant's petition for rehearing is denied.

There is no change in the judgment. Margulies, Acting P.J. (Not for Publication.)

Division Two

A118327 – Urban Habitat Program, et al. v. City of Pleasanton, et al.

The judgment of dismissal is affirmed insofar as it dismisses the fifth and sixth causes of action in the complaint, but reversed with regard to the remaining causes of action of the complaint. Each party is to bear their own costs on appeal. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

Division Four

A119077 – In re Amber F. et al., Persons Coming Under the Juvenile Court Law. Napa County Department of Health and Human Services v. Veronica F.

The order is affirmed. River, J. We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication).

A119010 – Neil Le Sage et al. v. Union Carbide Corporation.

The judgment is reversed in part and affirmed in part. Summary adjudication as to the first, second, and tenth causes of action is reversed. Summary adjudication as to the third and fourth causes of action is affirmed. Each side shall bear its own costs incurred on appeal. Sepulveda, J. We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication).

Friday, June 20, 2008 (Continued)

Division Five

A120269 – In re Davionna J., a Person Coming Under the Juvenile Court Law. The People v. Davionna J.

The disposition is affirmed. Jones, P.J. We Concur: Needham, J., Reardon, J.*
(Certified for Partial Publication.)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, June 23, 2008

Division Three

A118379 – The People, v. Richard Burnham Batson.

The judgment is affirmed. Siggins, J. We Concur: Pollak, Acting P J., Jenkins, J. (Not for Publication.)

A117256 – The People, v. Thomas Joseph Marshall.

The judgment is affirmed. McGuiness, P.J. We Concur. Siggins, J., Jenkins, J. (Not for Publication.)

A120536 – The People, v. The Superior Court Of San Francisco County; Paul George, R.P.I.

Let a writ of mandate issue directing the superior court to vacate its prior orders denying the motion of the district attorney for a pinpoint instruction, dismissing the recommitment petition, and ordering George's release, and to enter a new order granting the motion for an instruction as discussed herein. The stay previously issued by this court is dissolved. Pollak, J., We Concur. McGuiness, P.J., Siggins, J. (Certified for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Monday, June 23, 2008

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Reardon, J., and Sepulveda, J.; Jacqueline Alameda, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A119785 Charles "Rocky" Martin
v.
County of Marin
Cause called. Alison Wilkinson argued for appellant Martin. Renee Brewer argued for respondent. Cause submitted.

A119427 Edmund Owen
v.
Susan Allen et al.
Cause called. Nicole Meredith argued for appellants Allen et al. Bryce Martin argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Rivera, J.

A118802 People
v.
Ricky Paul Smith
Cause called. Robert Condie argued for appellant Smith. Christina vom Saal argued for respondent. Cause submitted.

Court recessed 10:37 a.m.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Monday, June 23, 2008

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A119514 Paul H. Melbostad
 v.
 Donald G. Fisher et al.
Cause called. In pro per appellant Paul Melbostad argued. Gabe Camarillo argued for respondents Fisher et al. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Rivera, J.

A117816 Silicon Valley Community Foundation
 v.
 Connie Beltran
Cause called. Robert M. Lubin argued for appellant Foundation. Jeffrey Loew argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A114495 People
 v.
 David John Wagner, Jr.
Cause called. Mai Linh Spencer argued for appellant Wagner. David Baskind argued for respondent. Cause submitted.

Court adjourned 2:26 p.m.

Monday, June 23, 2008 (Continued)

Division Five

A119728 – In re Aaron H., a Person Coming Under the Juvenile Court Law. Contra Costa County Children and Family Services Bureau v. Corina C.

The order terminating parental rights is conditionally vacated, and the matter is remanded to the juvenile court for the Bureau to provide prompt and proper notice under the ICWA and as set forth in this opinion. If it is determined that Aaron is an Indian child, the juvenile court shall invalidate the order or orders which violated the ICWA and proceed in accordance with the ICWA and other applicable law. If it is determined anew that Aaron is not an Indian child, the order terminating parental rights shall be reinstated, subject to the juvenile court's consideration of any new material circumstances. Needham, J. We Concur: Simons, Acting P.J., Reardon, J.* (Not for Publication.)

A118353 – The People, v William A. Smith.

The judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Reardon, J.* (Not for Publication.)

A118887 – In re Racquelle J., et al., Persons Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services. Latrisha J. H.

The appeal is dismissed. Jones, P.J., We Concur: Simons, J., Reardon, J.* (Not for Publication.)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Monday, June 23, 2008

The Court convened at 1:30 p.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Ruvolo, P.J., Sepulveda, J., and Rivera, J.; Channing Hoo, Deputy Clerk; CHP Officer Christian Oliver, Bailiff.

A119514 Paul H. Melbostad
 v.
 Donald G. Fisher et al.
Cause called. In pro per appellant Paul Melbostad argued. Gabe Camarillo argued for respondents Fisher et al. Cause submitted.

At this point, the court reconstituted itself to include Ruvolo, P.J., Reardon, J., and Rivera, J.

A117816 Silicon Valley Community Foundation
 v.
 Connie Beltran
Cause called. Robert M. Lubin argued for appellant Foundation. Jeffrey Loew argued for respondent. Cause submitted.

At this point, the court reconstituted itself to include Reardon, Acting P.J., Sepulveda, J., and Rivera, J.

A114495 People
 v.
 David John Wagner, Jr.
Cause called. Mai Linh Spencer argued for appellant Wagner. David Baskind argued for respondent. Cause submitted.

Court adjourned 2:26 p.m.

Tuesday, June 24, 2008

Division One

A120621 – The People, v. Yacob Dawit Dain.

After a full review of the record, we find no arguable issues and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A115773 – The People, v. Rasheed Jamal.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Richman, J. (Not for Publication.)

A121148 The People, v. Cary W. Rampone.

There is no sentencing error. There are no legal issues that require further briefing. The judgment and sentence imposed are affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

A118075 – In re Frank A. et al., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. O.A.

The June 4, 2007 order is affirmed. Jenkins, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication.)

A117422 – Claudia Carter v. San Francisco Unified School District et al.,.

The trial court properly granted summary judgment in favor of respondents. As such, the judgment is affirmed. Costs are awarded to respondent. Jenkins, J. We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A119571 – In re Keifer G., a Person Coming Under the Juvenile Court Law. San Francisco County Department Of Human Services v. Kief G.

The juvenile court's order terminating appellant's parental rights and referring Keifer for adoption is affirmed. Jenkins, J. We Concur: McGuiness, P.J. Siggins, J. (Not for Publication.)

Tuesday, June 24, 2008(Continued)

Division Four

A117300 – The People, v. Jones, P.J. Michael Moore.

The judgment is affirmed. Rivera, J., We Concur: Ruvolo, P.J., Reardon, J. (Not for Publication)

A118109 – Mary Hagan v. Bernard P. Hagan et al.

By the Court: Appellant Mary Hagan's "Motion, Application or Request to take Judicial Notice of Error in Attorney Record...Request for Extension of Time...Request to Renew Request for Judicial Notice and Motion to have Sommers, Schwartz and Steiner removed..." [sic] filed June 17, 2008, is denied in full. Appellant's "Request for An Extension of Time to Do Opening Brief. Judicial Notice, Augment Record to Include Exhibits," [sic] filed June 23, 2008., is denied in full. Pursuant to this court's June 5, 2008 order, and this court's rule 8.220 (a) notice dated June 11, 2008, the appellant's opening brief remains due June 26, 2008. This appeal will be dismissed if appellant fails to file her opening brief by said due date. Appellant is hereby notified that this court will not consider repetitive motions, applications, or requests. Ruvolo, P.J.

Wednesday, June 25, 2008

Division One

A114564 – People, of The State of California v. Willie B. Coleman III.

The trial court is directed to vacate its order of restitution to the Department of the Air Force in the amount of \$8,497.38, and to prepare and forward to the Department of Corrections an amended abstract of judgment in case No. FCR212343 reflecting this change. In all other respects the judgment is affirmed. Stein, Acting P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

A118193 - In re Devon W., a Person Coming Under the Juvenile Court Law. The People, v Devon W.

The judgment of the juvenile court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A113869 – The People, v. Ralph Brown.

The judgment of conviction is affirmed. By separate order filed this date, we deny the petition for writ of habeas corpus without issuing an order to show cause. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

Division Two

A116391 – The People, v. Jose Alfredo Rodriguez- Montero.

The judgment of conviction is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A121500 – Heather H., v. The Superior Court of Contra Costa County, Contra Costa Children & Family Services Bureau, R.P.I.

The order to show cause is discharged, and the petition for extraordinary writ is denied on the merits. (See§ 366.26, subd. (I); Cal. Rules of Court, rules 8.452 (i).) *In re Julie S.* (1996) 48 Cal. App.4th 988, 990-991.) Our decision is final immediately. (Cal. Rules of Court, rule 8.264 (b).)Siggins, J., We Concur: McGuiness, P.J., Jenkins, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

Wednesday, June 25, 2008

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Presiding Justice McGuiness, Siggins, J., Jenkins, J., and A. Reasoner, Deputy Clerk.

A118864 LaRue

v.

DeMarco

Cause called and argued by Paul Kleven, counsel for appellant DeMarco, and Steven McCarthy, counsel for respondent LaRue. Mr. McCarthy appeared by telephone. Gregory Stanfield, counsel for intervenor East Bay Regional Park District, also appeared, but did not argue. Cause argued and submitted.

A117666 Campbell

v.

Costco Wholesale Corporation

Cause called and argued by Joseph Poppen, counsel for appellant Campbell, and John McDonald, counsel for respondent Costco. Cause argued and submitted.

COURT ADJOURNED

Wednesday, June 25, 2008 (Continued)

Division Five

A116109 – The People, v. Adam Kalani Jones.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A118371 – In re Nario J., a Person Coming Under the Juvenile Court Law. The People v Nario J.

The jurisdictional order and the dispositional order are affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

A118508 - The People, v. Douglas Raymond Jurling.

The judgment is affirmed. Simons, Acting P.J., We Concur: Needham, J., Stevens.,* (Not for Publication.)

A118822 - Phillip M. Hart v. Joseph B. Giannini et al.

The judgment is affirmed. Simons, J., We Concur: Jones, P.J, Needham, J. (Not for Publication.)

* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution..

Thursday, June 26, 2008

Division One

A118460 – Harold Vinson v. San Francisco Community College District.

The appeal is dismissed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A119583 – The People, v. Brendan Francis Boyle.

The judgment is affirmed. Marchiano, P.J., We Concur: Swager, J., Margulies, J. (Not to be Published.)

A119826 – Rainer J. Faerber v. Robert Schroth et al.

The order is affirmed. Swager, J., We Concur: Marchiano, P.J., Stein, J. (Not for Publication.)

A119782 – In re Eric G., a Person Coming Under the Juvenile Court Law. The People v. Eric G.

The judgment is modified to strike the five juvenile probation conditions added to the minute order. The cause is remanded to the juvenile court with directions to so correct the order. The judgment is affirmed in all other respects. Swager, J., We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

Division Two

A114736 – The People, v Wallace Nickolas Himmer, JR. In re Wallace Nicolas Himmer, JR.

A119794 – The People, v Wallace Nickolas Himmer, JR. In re Wallace Nicolas Himmer, JR.

The judgment is affirmed. The petition for writ of habeas corpus is denied. Kline, P.J. We Concur: Haerle, J., Richman, J. (Not for Publication)

A118598 – The People, v. Jesse O' Hara.

The order of probation is affirmed. Richman, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Thursday, June 26, 2008(Continued)

Division Three

A119129 - The People, v. Eric Lamont Harris.

The conviction is affirmed and the matter is remanded to the trial court for resentencing. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A117480 – The People, v. Manuel Pequeno.

The judgment is affirmed. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A120025 – The People, v. Jerome D. Jones.

The judgment is affirmed. Jenkins, J., We Concur: McGuiness, P.J., Siggins, J. (Not for Publication.)

A119444 – In re Trey D. et al., Persons Coming Under the Juvenile Court Law. Sonoma County Human Services Department v Jonna A.

The order terminating parental rights is vacated and the matter is remanded to the juvenile court with directions to order compliance with the notice provisions of ICWA. If, after proper inquiry and notice, no response is received from a tribe indicating the minors are Indian children, all previous findings and orders shall be reinstated with respect to the minors. If a tribe determines that the minors are Indian children, the court shall conduct a new section 366.26 hearing with respect to the minors in conformity with ICWA and applicable state law. McGuiness, P.J., We Concur: McGuiness, P.J. We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A117252 – The People, v. Christopher Brooks.

The judgment is affirmed. Sepulveda, J., We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication.)

A117003 – The People, v. Fajri Yusuf Waqia.

The judgment is modified to replace the sentence “Defendant shall pay \$500.00 for the Public Defender Fees through O.R.C.” with the sentence “Defendant is referred to the Office of Revenue Collections for a determination to his ability to pay Public Defender Fees in the amount of \$500.” The trial court is directed to prepare corrected minutes and a corrected abstract of judgment, and to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. Ruvolo, P.J., We Concur: Sepulveda, J., Rivera, J. (Not for Publication.)

Thursday, June 26, 2008(Continued)

A117860 – The People, v. Cornelious Joseph Boyle.

The commitment order is affirmed. Reardon, Acting P.J., We Concur: Sepulveda, J., Rivera, J. (Certified for Partial Publication.)

A121443 – Liza Jane Gaoay v. The Superior Court of The County of San Francisco, Brent C. Maloy. R.P.I.

By The Court. All subsequent undersigned date references are to the year 2008. Ruvolo, P.J., Reardon, J., and Sepulveda, J. (Not for Publication.)

Thursday, June 26, 2008(Continued)

Division Five

A115177 – William J. Murphy, JR., v Maureen Murphy, Individually and as Trustee, etc.

The judgment is reversed. Appellant shall be awarded costs on appeal. Simons, J., We Concur: Jones, P.J., Stevens,* (Certified for Publication.)

A118013 – Emmanuel Becerra, a Minor, etc., et al., v Contra Costa County.

The judgment is affirmed. Respondent shall recover its costs on appeal. Jones, P.J., We Concur: Simons, J. Reardon, J.* (Not for Publication.)

A117018 – Joseph W. Engler v City and County of San Francisco et al.

The judgment is affirmed. ., Stevens, J.* We Concur: Jones, P.J., Needham, J. (Not for Publication.)

A115177 – William J. Murphy, JR., v. Maureen Murphy, Individually and as Trustee, etc.

The judgment is reversed. Appellant shall be awarded costs on appeal. Simons, J., We Concur: Jones, P.J., Stevens, J. (Certified for Publication.)

* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution..

* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution..

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 the California Constitution.

A118013 – Emmanuel Becerra, a Minor, etc., et al., v. Contra Costa County.

The judgment is affirmed. Respondent shall recover its costs on appeal. Jones, P.J., We Concur: Simons, J., Reardon, J. (Not for Publication.)

A117018 – Joseph W. Engler v. City and County of San Francisco et al.

The Judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Needham, J. (Not for Publication.)

Thursday, June 26, 2008 (Continued)

Division One

A117297 – The People, v. Milton Eaton.

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication.)

A118374 – In re Timothy M. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Michael M. et al.

The judgment of the trial court is affirmed. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

A121228 – Ronald Houff v. The Superior Court of the City and County of San Francisco; The People, R.P.I.

By The Court: Petitioner, Ronald Houff, seeks a writ of prohibition restraining the Superior Court of the City and County of San Francisco from further proceedings in the instant case. The parties are familiar with the factual and procedural history of the case, and we need not reiterate it here in detail. (*People v. Garcia* (2002) 97 Cal.App.4th 847.)

Petitioner contends the superior court granted his motion under Penal Code section 995 to dismiss the information on April 15, 2008, but then improperly reconsidered and denied the motion on the following day after reading additional authority relevant to the motion. The People concede that the court made a final order when it granted petitioner's motion on April 15, 2008, and that it had no authority subsequently to reconsider the motion in order to correct judicial error. (See *Smith v. Superior Court* (1981) 115 Cal.App.3d 285, 288-290.)

In requesting that we direct the superior court to vacate its order of April 16, 2008, in which it denied petitioner's motion after reconsideration, the People implicitly waive oral argument and stipulate to the immediate issuance of the remittitur. We have also afforded all parties prior notice that we might issue our peremptory writ in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177-180.)

Therefore, let a peremptory writ of prohibition issue restraining respondent the Superior Court of the City and County of San Francisco from taking any further action in case No. SCN-204260 other than dismissal, without prejudice to the People's right to appeal.

This opinion is final for all purposes immediately upon filing, and the clerk of this court shall forthwith issue the remittitur. The stay issued on April 17, 2008, is hereby dissolved.

Before Marchiano, P.J., Stein, J., and Swager, J. (Not for Publication.)

Monday, June 30, 2008

Division One

A115069 – Mari- Lynne Earls, v. Elizabeth Lee. (Alameda County Super. Ct. No. BG05197210)

A115069 – Elizabeth Lee, v Mari-Lynne Earls. (Alameda County Super. Ct. No. BG05201136)

The August 3, 2006 order is affirmed. Respondent is entitled to her costs on appeal. Stein, Acting P.J., We Concur: Swager, J., Margulies, J. (Not for Publication.)

A118354 – The People, v. Clarence John McCarty.

The judgment of the trial court is affirmed. Margulies, J., We Concur: Marchiano, P.J., Swager, J. (Not for Publication.)

Division Two

A114848 – Gina Ontiverous v. DHL Express (USA), INC.

The trial court's order denying the motion to compel arbitration is affirmed. Costs on appeal are awarded to plaintiff. Kline, P.J., We Concur: Lambden, J., Richman, J. Certified for Publication.)

A116335 – The People, v. Walter Jackson.

The judgment is affirmed. Haerle, J., We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A120033 – In re Brianna L., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency, v. Angela L.'

The order of the juvenile court terminating appellant's parental rights with respect to Brianna L. is affirmed. (Not for Publication.)

A115938 – The People, v. Jarell Maurice Johnson.

The judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Richman, J. (Not for Publication.)

A118616 – The People, v. Larry S. Finks.

We conclude that the condition of probation requiring appellant to surrender his medical

marijuana identification card, which was designed to prohibit him from using medical marijuana pursuant to the CUA during the period of his probation, is overbroad and not reasonably related to the compelling state interest in reformation and rehabilitation. The more narrowly drawn condition of probation prohibiting appellant from driving a motor vehicle with any amount of drugs in his system adequately ensures that the public will not be placed at risk by the influence of appellant's medical marijuana use on his ability to drive safely. Conditions of probation not authorized by law are severable from and do not affect the valid conditions of the order. (*People v. Dominguez* (1967) 256 Cal.App.2d 623, 629; *People v. Mason* (1960) 184 Cal.App.2d 182, 187.) So much of the order requiring appellant to surrender his medical marijuana identification card and prohibiting him from using medical marijuana pursuant to the CUA while on probation is stricken. In all other respects, the judgment is affirmed. Kline, P.J., We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Monday, June 30, 2008 (Continued)

Division Three

A120103 – The People, v. John William Marsic.

Having reviewed the entire record for potential error, we find none. Accordingly, the judgment and sentence imposed by the trial court are affirmed. (Not for Publication.)

Monday, June 30, 2008 (Continued)

A118757 – The People, v. Lilian Louisa Guterres.

The judgment is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Rivera, J. (Not for Publication.)

A120004 – The People, v. William Carlo Elam.

The judgment is affirmed. McGuiness, P.J., We Concur: Pollak, J., Siggins, J. (Not for Publication.)

A117666 – Kay Campbell v. Costco Wholesale Corporation.

The judgment is affirmed. Respondent shall recover its costs on appeal. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A118864 – Carl L.LaRue v. Joseph A. DeMarco.

The June 19, 2007 order is affirmed. Plaintiff is awarded costs on this appeal. McGuiness, P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

A119318 – The People, v. James Garfield Ratcliff.

The judgment is affirmed. The court is directed to correct the clerical error in the minute order of August 28, 2007, to delete reference to the laboratory and drug education fees. Pollak, Acting P.J., We Concur: Siggins, J., Jenkins, J. (Not for Publication.)

Division Four

A121405 – In re Christopher Melendrez.

The petition for writ of habeas corpus is granted. The appellate division of the superior court is ordered to reinstate petitioner's appeal (San Francisco County Super. Ct., Appellate No. 6585) and to deem it timely filed under the doctrine of constructive filing. Ruvolo, P.J., Reardon, J. and Sepulveda, J. (Not for Publication.)

A120240 – Richard J. Wolf, v. Glassberg, Pollak & Associates.

The order is affirmed. Reardon, J., We Concur: Ruvolo, P.J., Sepulveda, J. (Not for Publication.)

Monday, June 30, 2008 (Continued)

The People, v. Howard Lawrence Webber, JR.

The judgment is affirmed. Ruvolo, P.J., We Concur: Reardon, J., Sepulveda, J. (Not for Publication.)

A116762 – The People, v. Roddy Allen McNevin.

The sentence is affirmed. Ruvolo, J., We Concur: Reardon, J., Rivera, J. (Not for Publication.)

Division Five

A119314 – The People, v. Evelyn Floyd.

The probation order is affirmed. Jones, P.J., We Concur: Simons, J., Needham, J. (Not for Publication.)

A117504 – Dorry Coppoletta, an individual on behalf of herself and all others similarly situated, et al., v. The State of California.

The judgment is affirmed. Costs on appeal are awarded to respondent. Needham, J., We Concur: Simons, Acting P.J., Reardon, J.*

A117253 – The People, v. Khalid Gheith.

The judgment is affirmed. Reardon, J.,* We Concur: Jones, P.J., Simons, J. (Not for Publication.)

A117010 – The People, v. Lynwood Darian Neubert.

The appeal is dismissed. Reardon, J.,* We Concur: Simons, Acting P.J., Needham, J. (Not for Publication.)

A120679 – In re N. M., a Person Coming Under the Juvenile Court Law. The People, v. N.M.

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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Monday, June 30, 2008 (Continued)

The minor was adequately represented, and the court's findings and orders are all supported by the facts and law. We find no arguable issues on appeal and affirm. Reardon, J., We Concur: Jones, P.J., Needham, J. Not for publication.)

A120526 – The People, v. Michael Fetters.

The judgment is affirmed. Needham, J., We Concur: Simons, Acting P.J., Reardon, J.* (Not for Publication.)

A119182 – The People, v. Nelson G. Castrejon.

The judgment is affirmed. Jones, P.J., We Concur: Simons, J., Reardon, J.* (Not for Publication.)

A118478 – Flat Glass Cases.

The order approving the settlement and awarding fees is affirmed. Jones, P.J., We Concur: Needham, J., Reardon, J.* (Not for Publication.)

A121119 – Manuel P., v. The Superior Court of Alameda County, Alameda County Social Services Agency.

The writ petition is denied. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal. 4th 888 [subsequent appeal challenge barred]; § 366.26, subd. (l)(1)C.) The April 14, 2008 order issued by this court to stay the .26 hearing is discharged. Simons, J. We Concur: Jones, P.J., Reardon, J.* (Not for Publication.)

A120781 - In re Matthew H., a Person Coming Under the Juvenile Court Law. The People v. Matthew H.

We find no arguable issues on appeal and affirm. Reardon, J.,* We Concur: Jones, P.J., Needham, J. (Not for Publication.)

* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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